

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

| | | |
|------------------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. CV02-5269RJB |
| v. |) | |
| |) | |
| DAN ALEXANDER and |) | |
| |) | CONSENT DECREE |
| HARRIET ALEXANDER, |) | |
| ALEXANDER FARMS SITE |) | |
| Defendants/Third-Party Plaintiffs, |) | |
| v. |) | |
| |) | |
| CET ENVIRONMENTAL SERVICES, |) | |
| INC., <u>et al.</u> , |) | |
| |) | |
| Third-Party Defendants. |) | |
| |) | |

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Alexander Farms Site in Grandview, Washington (“the Site”).

B. The defendants, Dan and Harriet Alexander (“Defendants”), have been found by this Court to be liable for all costs incurred by the United States not inconsistent with the National Contingency Plan (“NCP”).

C. The Defendants filed a third party complaint against third party defendants Ecology & Environment, CET Environmental Services, Inc., and Dow Chemical Company (“Third Party Defendants”). The Third Party Defendants and Defendants have agreed to and entered into a settlement agreement separate from this consent decree (“Private Party Agreement,” which is Appendix A to this Consent Decree), in which the Defendants release any and all of their claims against the Third Party Defendants relating to the Alexander Farms Site; the Third Party

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

Defendants release any and all of their claims against the Defendants relating to the Alexander Farms Site; and, with the exception of permissible indirect costs as defined by Federal Acquisition Regulation 48 C.F.R. 31.203, the Third Party Defendants CET and E&E release any and all of their potential claims against the United States relating to the Alexander Farms Site and to their contracts for performing work at the Alexander Farms Site pursuant to CERCLA. The Private Party Agreement further provides that the United States as a third-party beneficiary has the right to enforce the release by Third-Party Defendants CET and E&E of claims against the United States set forth in the Private Party Agreement. This release is a material factor in the United States' assent to this consent decree.

D. The United States and Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and supplemental jurisdiction under 28 U.S.C. § 1367, and also has personal jurisdiction over Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding on the United States and the Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, both intramural and extramural, that EPA or DOJ on behalf of EPA has paid

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

or incurred at or in connection with the Site on or before October 31, 2003, plus accrued Interest on all such costs.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Defendants" shall mean Dan and Harriet Alexander and their respective estates.

n. "Site" shall mean the Alexander Farms Superfund Site (a/k/a Grandview South Hop Ranch), which is located on a tract of real property encompassing approximately 400 acres known as the Grandview South Hop Ranch in Grandview, Benton County, Washington, and generally shown on the map included in Appendix B.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

V. PAYMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to EPA. Within 60 days of entry of this Consent Decree, Defendants shall pay to EPA \$ 3,550,000.00.

5. Payment by Defendants shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Western District of Washington following lodging of the Consent Decree.

Office of the U.S. Attorney
For the Western District of Washington
3600 Seafirst Plaza
800 Fifth Avenue, Rm. 3601
Seattle, WA 98104

6. At the time of payment, Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). The notice shall contain the EPA Region and Site/Spill Identification Number 105W, DOJ case number 90-11-2-07580, and Civil Action No. CV02:5269RJB.

7. All the money paid by Defendants pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If the Defendants fail to pay the full amount required by Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the date payment is due under Paragraph 4 through the date of payment.

9. Stipulated Penalty.

a. If the amount due under Paragraph 4 is not paid by the required date, Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$ 1,000 per day that such full payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall state the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 105W, DOJ Case Number 90-11-2-07580, Civil Action No. CV02:5269RJB. Defendants shall send the check (and any accompanying letter) to:

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

Mellon Bank
EPA Superfund-Region 10
P.O. Box 360903M
Pittsburgh, PA 15251-6903

c. At the time of each payment, Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall contain the EPA Region and Site/Spill ID Number 105W, DOJ Case Number 90-11-2-07580, and Civil Action No. CVO2-5269RJB.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States takes action to enforce this Consent Decree, Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of either of the Defendants to make the payments required under this Consent Decree, the remaining Defendant shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

VII. COVENANT NOT TO SUE BY PLAINTIFF

14. Covenant Not to Sue Defendants by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Defendants and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Setting Defendants with respect to:

- a. liability for failure of Defendants to meet a requirement of this Consent Decree;

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

16. Nothing in this consent decree shall be deemed to rescind or otherwise disturb the Court's prior rulings in this action, including but not limited to: (1) Order On United States' Motion To Dismiss Counterclaims (January 9, 2003; Dkt. 43); (2) Order on United States' Motion for Summary Judgment On Defendants' Liability (January 9, 2003; Dkt. 44); and (3) Order On Alexanders' Motion For Partial Summary Judgment Limiting The United States' Claim For Response Costs To Not More Than \$2,000,000 (June 30, 2003; Dkt. 94).

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

IX. COVENANT NOT TO SUE BY DEFENDANTS

17. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or employees, or its contractors including but not limited to E&E and CET, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Washington, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs; or

d. any and all claims against the United States as set forth in the Alexanders' Second Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint filed

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

in this action, including but not limited to claims for response costs and declaratory relief, claim under pesticide exemption (42 U.S.C. § 9607(i)), claim for inconsistency with the National Contingency Plan or NCP (42 U.S.C. § 9604(a)), and claim under the Washington Model Toxics Control Act or MTCA (RCW 70 105D 080).

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. Except as set forth in Section IX (Covenant Not to Sue By Defendants), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

§ 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs.

21. Each Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

XI. RETENTION OF RECORDS

23. Until 10 years after the entry of this Consent Decree, each Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

24. After the conclusion of the 10-year document retention period in the preceding paragraph, Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Defendants shall deliver any such records to EPA. Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendants’ favor.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

25. Each Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

XII. NOTICES AND SUBMISSIONS

26. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Defendants, respectively:

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-07580)
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

As to EPA:

Jennifer Byrne
Assistant Regional Counsel, Region X
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

and

Financial Management Officer
U.S. Environmental Protection Agency
1200 Sixth Avenue, OMP-146
Seattle, Washington 98101

As to Defendants:

Michael B. Gillett, Esq.
McElroy Law Firm, PLLC
Two Union Square
601 Union Street, Suite 3700
Seattle, Washington 98101

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

XIII. RELEASE OF LIEN

27. Upon notification from the Washington Department of Ecology that soil excavation and disposal at the Alexander Farms Site has been completed to the satisfaction of the Washington Department of Ecology, EPA will take the necessary steps to release its CERCLA lien on real property pertaining to the Alexander Farms Site.

XIV. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

29. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Defendants with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the Private Party Agreement between Third Party Defendants Dow, E&E, and

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

CET and the Defendants. "Appendix B" is the map of the Site. Nothing in the Private Party Agreement shall be inconsistent with this consent decree. In the event there is a conflict between either appendix and the consent decree, the consent decree will govern.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

32. Each undersigned representative of a Defendant to this Consent Decree and the Chief/Deputy Chief, Environmental Enforcement Section, the Environment and Natural Resources

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. Each Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

34. Each Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

XVIII. FINAL JUDGMENT

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2004.

The Honorable Robert J. Bryan
United States District Judge

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States of America v. Dan Alexander and Harriet Alexander*, Civil Action No. CV02-5269RJB, relating to the Alexander Farms Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 2/25/04

Catherine R. McCabe
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

Catherine Banerjee Rojko
Senior Counsel
Neil Cowie
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
Telephone: 202-514-5315

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315


John McKay
United States Attorney for the
Western District of Washington


Brian C. Kipnis
Assistant United States Attorney
Western District of Washington
601 Union Street
50100 Two Union Square
Seattle, Washington 98101-3903
Telephone: 206-553-7970

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315


L. John Ian
Regional Administrator, Region X
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101


Jennifer Byrne
Assistant Regional Counsel, Region X
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

Consent Decree

U.S. v. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-5315

FOR DEFENDANTS DAN AND HARRIET ALEXANDER

Date: January 21, 2007

Dan Alexander

Date: January 21, 2004

Harriet Alexander

Date: January 27, 2004

Page 27

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February 2004, the foregoing **Notice of Lodging of Consent Decree** was filed electronically with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michael B. Gillett, Esquire
McElroy Law Firm, PLLC
Two Union Square
601 Union Street, Suite 3700
Seattle, Washington 98101
Fax: (206) 654-4161

*Counsel for Defendants,
Dan and Harriet Alexander*

Loren R. Dunn, Esquire
Riddell Williams, P.S.
1001 Fourth Avenue Plaza, Suite 4500
Seattle, Washington 98154
Fax: (206) 389-1708

*Counsel for Third-Party Defendant,
CET Environmental Services, Inc.*

Bradley B. Jones, Esquire
Gordon, Thomas, Honeywell, Malanca,
Peterson & Daheim LLP
1201 Pacific Avenue, Suite 2200
P.O. Box 1157
Tacoma, Washington 98401
Fax: (253) 620-6565

*Counsel for Third-Party Defendant,
The Dow Chemical Company*

Beth S. Ginsberg, Esquire
Stoel Rives LLP
One Union Square
600 University, Suite 3600
Seattle, WA 98101-3197
Fax: (206) 386-7500

*Counsel for Third Party Defendant,
Ecology & Environment*

Catherine Banerjee Rójko
Senior Counsel
Environmental Enforcement Section

Certificate of Service for Notice of Lodging of Consent Decree

U.S. Dan & Harriet Alexander, CV02-5269RJB

Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044 202-514-7784